

THE TRUTH ABOUT THE DODD-FRANK WALL STREET REFORM & CONSUMER PROTECTION ACT (P.L. 111-203)

WALL STREET JOURNAL: BIG WIN FOR SMALL BANKS IN OVERHAUL

Some of the smallest U.S. banks are heading toward a big boost from financial-overhaul legislation. A string of provisions tucked into the bill being voted on by the House on Wednesday would reduce the premiums that small banks pay to the Federal Deposit Insurance Corp., exempt them from parts of the newly proposed consumer-protection agency and reduce their financial exposure to some mortgages by allowing the small banks to sell the loans to investors. The bill also would permit small institutions to count certain types of securities toward their capital requirements. Larger U.S. banks wouldn't be permitted to do so ... So far, the community bankers' group estimates that the bill would save the industry \$4.5 billion over three years by basing the amount of a bank's contribution to the FDIC deposit-insurance fund on the amount of a bank's assets. Premiums now are assessed based on the amount of a bank's deposits. The community-banking industry also is breathing a sigh of relief over a measure that exempts them from the phase-out of trust-preferred securities. Large and small banks raced to issue such securities, which are a hybrid of equity and debt, in the past decade after regulators decided they could be used toward capital requirements. – [Wall Street Journal](#), 7/1/10

INDEPENDENT COMMUNITY BANKERS OF AMERICA: IMPORTANT ICBA-ADVOCATED WINS

[T]he Dodd/Frank Act does create an important precedent that recognizes two distinct sectors within the financial services spectrum—Main Street community banks and Wall Street megabanks. Important ICBA-advocated wins in the bill such as changes in the FDIC assessment base, stricter oversight of too-big-to-fail institutions, and the inclusion of non-bank financial firms under consumer compliance regulations will save community banks money and allow them to better compete, serve their communities and promote economic growth in their markets. Also, the bill contains important concessions for community banks, including protection for trust preferred securities and an exemption from paying higher FDIC premiums to increase the minimum size of the deposit insurance fund. These and several other concessions establish the congressional policy for tiered regulation that recognize Main Street community banks as having a different banking model from large and internationally active institutions. – [Press Release](#), 7/15/10

AMERICAN BANKER: BIG BANKS KEEP PUMPING OUT POISON

Big banks "keep pumping out poison after poison and it just scares the willies out of" community bankers, [Cam Fine, the chief executive of the Independent Community Bankers of America] told reporters at the ICBA's annual convention in San Diego. "They just read the headline and say, 'Oh my God, this is what's going to happen and this is terrible,' but not a thing has happened to a community bank related to Dodd-Frank yet. Aside from a proposed cap on interchange fees, Fine said very little will impact small banks. More than half the bill's 16 titles, or 85% of the text, have virtually nothing to do with small banks, he said. Such assurances are doing little to take the fight out of some bank executives, who remain convinced that the law's unknowns and negatives outweigh any positives ... Legal experts say Fine's claims are mostly true. "A lot of it really does not apply to run-of-the-mill community banks, at least not right now," said Sanford Brown, a managing partner at Bracewell & Giuliani LLP in Dallas. – [American Banker](#), 3/31/11

Because the Dodd-Frank Act (DFA) is focused on Wall Street and other actors that created the financial crisis, the DFA includes the following important provisions and exemptions that will benefit community banks:

- **Community banks are exempt from the new Consumer Financial Protection Bureau's examination and enforcement power.** Under Section 1026 of the DFA, consumer protection enforcement for community banks and credit unions with \$10 billion or less in assets with their current bank regulator.
- **Oversight of "shadow lending."** Nonbank competitors of small banks will be overseen by the Consumer Financial Protection Bureau, including mortgage-related businesses, payday lenders, and student lenders.
- **Community banks exempted from paying for higher DIF reserve ratio.** Section 334 holds harmless all banks with less than \$10 billion in assets under a provision to raise the minimum DIF reserve ratio from 1.15% of total deposits to 1.35% of total deposits by 2020.
- **Permanent increase to \$250,000 of deposit insurance.** Section 335 will extend deposit insurance up to \$250,000 per account, helping community banks and credit unions compete with larger institutions.
- **Two-year extension of FDIC's Transaction Account Guaranty (TAG) program.** Section 343 extends the TAG program for 2 years, providing depositors with unlimited coverage for noninterest-bearing transaction accounts at participating FDIC-insured institutions, including interest on lawyer trust accounts (IOLTA).
- **Exemption from Sarbanes-Oxley auditor attestation requirements.** Section 989G exempts small banks (those with less than \$75,000,000 in market capitalization) from the external audit of internal controls requirements of Sarbanes-Oxley Section 404(b), and requires studies on the impact of such an exemption and the exemption for mid-sized companies.
- **Community banks will pay less for their Deposit Insurance Fund (DIF) assessments.** Section 331 of DFA changes the assessment base from domestic deposits to assets minus tangible equity, saving community banks an estimated \$4.5 billion over the next 3 years.
- **Rather than applying national lending limits to state-chartered banks,** the DFA allows state banks to continue to follow state lending limits. However, Section 611 requires if a state-chartered bank engages in derivatives transactions, the state lending limit continues to apply only if it includes credit exposure arising from derivatives transactions.
- **Exemptions from new capital and leverage rules.** Under Section 171, trust-preferred securities (TruPS) issued before May 19, 2010 by a depository institution holding company with total consolidated assets of less than \$15 billion as of December 31, 2009, or any mutual holding company will not be forced to take any capital deductions on these instruments.
- **Community banks are largely exempt from rules for Wall Street derivatives trading.** Insured depository institution will not be subjected to heightened regulation as a derivatives dealer to the extent that it offers derivative products to its customers in connection with its loan products. Banks will also be able to continue to use derivatives to hedge their own interest rate risk, and a de minimis provision exempts banks that use derivatives infrequently.
- **Industrial Loan Company moratorium.** The Act imposes a 3-year moratorium on new industrial loan company charters. A de facto moratorium is currently in effect.